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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,792	03/07/2001	John C. Evans	GME-138/119	5511

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT PAPER NUMBER

1761

DATE MAILED: 04/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/800732

Applicant(s)

EVANS

Examiner

S. WEINSTEIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 12/1/03 + 2/11/04
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-43 is/are pending in the application.
- ☐ Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-43 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-43 are rejected under 35 U.S.C. 112, first paragraph, as containing

New Matter. The New Matter is the recitation that the wad is in "direct contact" with the inner surface of the container body. As noted in the Advisory action mailed February 3, 2004, the specification as originally filed has no written description that the wad is in direct contact with the inner surface of the container body. This phrase would limit the claims to the wad being positioned in the container such that at least part of its outer surface is not enclosed in some enclosing element such as a bag, a collar, etc. There is no support in the specification for this further limiting recitation. Applicant points to the fact that the figures show a wad in the container which is touching one or more surfaces and the wad is not enclosed in a bag. The latter urging is based on a position of silence. That is, the specification does not disclose a bag so there is not one. This urging is not convincing. It is not at all clear that the figures show a wad in direct contact with the inner surface of the container. Figures 1B, 2 and 3 have cross hatching to indicate the outer container. The wads of cotton candy could be in transparent bags which may not be discernible in the figures as shown. It is again noted that the new recitation is not specifically described in the specification as originally filed. Applicant urges that the specification discloses that the wad is placed in the containers. However, the wad of cotton candy would still be described as being

placed in the container even if it was enclosed in a wrapper. Applicant is again using silence to support a narrowing of the original disclosure in an attempt to overcome a reference and thus would be New Matter.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over San Francisco Examiner in view of www.beyondtheraindow2oz.com further in view of Packaging Week (12(33) February 30, 1999, page 2), Atlanta Constitution (Tues., 3/30/99, p. D2), Golub (Russia 2,111,908), Forbes November 8, 1993, page 67), The Charlotte Observer (March 4, 1993, page 1E), the Seattle Times (December 30, 1993), page B1), Akron Beacon J. (November 11, 1992, page C1), Star Tribune (October 17, 1994, page 1E), further in view of Newman (3,624,787), Beall (3,956,510) and Ruff (3,788,463) essentially for the reasons fully and clearly detailed in the Office action mailed August 29, 2003.

The independent claims now recite that the wad is in direct contact with an inner surface of the container body. This recitation is seen to be New Matter for the reasons given above. In any case, whether the wad directly contacts an inner surface of the container body or not is seen to have been an obvious matter of choice. As noted above, this phrasing leaves in or leaves out, depending how one looks at it, many possibilities. The only possibility excluded is if the wad is fully enclosed in a bag (or if the wad is raised up off the bottom and spaced from the sidewall in some shock absorbing inner element). Contrary to what has been urged by applicant, it is not

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clear that the art taken as a whole teaches providing the wad in the container enclosed in a bag. The San Francisco Examiner does not mention any bag. The article states that cotton candy was for sale wherein a puff of cotton candy was set in a plastic bucket. The article does not say that the cotton candy was in a bag and set in a plastic bucket. It is not seen that applicant can have it both ways. That is, applicant attempts to urge that since the specification as filed does not mention a bag, then none was disclosed so the direct contact recitation is supported, but then applicant urges that the San Francisco Examiner article describes a bag in the bucket when none is mentioned. As for the mid 1990's Wizard of Oz on Ice Collection offered for sale on the Internet, there is no clear statement that the cotton candy was sold in the bag in the bucket. In fact, the cotton candy could readily and logically have been sold either in the bag or in the bucket or could have been given out to transfer any remaining cotton candy to the bag if one wanted to use the bucket for some other reason. Note, too, none of Forbes, Charlotte Observer, Seattle Times, Akron Beacon J. and the Star Tribune mention a bag. They all refer to cotton candy in a bucket. Finally, even if a showing could be made that the art taken as a whole used both a bag and a bucket, to eliminate the bag and its function would have been obvious. Applicant is not the first to place food directly into a plastic container without an intermediate bag. In fact, this is the rule, not the exception. For example, Beall who discloses packaging a food product, that is prone to damage/alteration by compressive forces, in a plastic container to avoid such problems, teaches placing the food product directly in the plastic container so that the food product directly contacts an inner surface of the container.

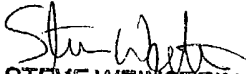
All of applicant's remarks filed December 1, 2003 and February 11, 2004 have been fully and carefully considered but are not found to be convincing for the reasons of record and the comments made above which address the new urgings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1410. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S.L. Weinstein/dh
April 26, 2004


STEVE WEINSTEIN
PRIMARY EXAMINER 1761
4/27/04